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Arb.O.P.(Comm.Div.)No.666 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2023

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The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.)No.666 of 2022

M/s.S.K.Engineering and Construction Company,
Rep. by its Authorised Signatory
T.Sivakumar
I Floor, Unit B-4, TNHB Flats,
Fairlands, Salem – 636 016.

...Petitioner

Versus

M/s.Bharat Heavy Electricals Ltd.,
Rep. by its Executive Director,
Boiler Auxiliaries Plant,
Indra Gandhi Complex,
Ranipet – 632 606.

...Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint an Arbitrator for adjudicating the disputes that have arisen between the petitioner and the respondent under the Contract No.975524716018 dated 13.06.2016.

For Petitioner : Mr.T.Sai Krishnan

For Respondent : Mr.S.Salai Geethan



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ORDER

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act') praying to appoint an Arbitrator, for adjudicating the disputes that have arisen between the petitioner and the respondent under the Contract No.975524716018 dated 13.06.2016.

2. The learned counsel for the petitioner submitted that the petitioner firm is a registered contractor with the respondent and it has done several works for the respondent from the year 2008-2009 onwards. While so, the respondent floated a Tender dated 30.03.2016, for the work of cleaning and servicing of ACs, Water Coolers, Panel ACs and Refrigerators etc., at BHEL, Ranipet for a period of two years. The petitioner participated in the said tender and the respondent awarded the contract to the petitioner. Pursuant to the said contract, on 13.06.2016, the respondent has issued a Work Order to the petitioner, wherein, the total value of the work as per Bill of quantities was stated at Rs.13,84,572/- including Service Tax at 15%.



That apart, on 11.08.2016, the respondent has entered into an Agreement with the petitioner in Contract Agreement No.975524716018. The tender document and the work order forms part and parcel of the said contract.

2.1. The work commenced on 01.08.2016 and the petitioner firm has successfully completed the work for the contract period of 2 years ending with 30.07.2018. The petitioner has raised the first running bill on 31.01.2017. Subsequently, on various dates, the petitioner has presented the running bills towards the works that have been carried out under the aforesaid work order and agreement. The respondent has cleared only some of the running bills presented by the petitioner. The Running Bill Nos.13 to 18 for the total value of Rs.2,64,410.86 submitted by the petitioner were kept pending by the respondent. Though the petitioner vide letters dated 28.03.2021, 06.05.2021, 02.06.2021, 29.06.2021, 21.08.2021, 11.09.2021, 29.09.2021, 13.10.2021, 09.11.2021 & 24.11.2021, repeatedly requested the respondent to settle the dues which are pending, there was no response for the same. The respondent did not come forward to settle the dues which is absolutely illegal and contrary to the terms of the contract entered into between the parties.



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2.2. As per Clause 21(a) of the Tender Notice, the dispute arose between the parties is arbitrable. For better appreciation, Clause 21(a) of the Tender Notice is extracted hereunder:

“21. (a) Arbitration

(i) All disputes between the parties to the Contract, arising out of or relation to the Contract shall after written notice by either party to the Contract to the other party be referred to the sole Arbitration of Executive Director, BAP or any designate nominated by the Executive Director of BHEL in his sole discretion.

(ii) The venue of Arbitration shall be Ranipet, Tamil Nadu. The arbitrator may hold meetings for convenience in such a place or places discretion.

(iii) The award of the Arbitrator shall be final, conclusive and binding on both parties to the Contract.

(iv) The Contractor shall not with standing any disagreement, dispute, protest, request for arbitration, court or other proceedings, continue to perform the Services in accordance with the determinations, instructions and clarifications of BHEL.”



Hence, the petitioner vide legal notice dated 26.05.2022, invoked Clause 21(a) of the Tender Notice dated 30.03.2016 and called upon the respondent to appoint an independent neutral person with legal background as the Arbitrator, for adjudicating the dispute between the parties, within 30 days from the receipt of that notice. Since there was no response from the respondent to the legal notice, left with no other alternative, the petitioner has filed the present petition for the aforesaid relief.

2.3. Further, the learned counsel submitted that the petitioner herein has already a filed a petition in Arb.O.P.(Com.Div.)No.664 of 2022, seeking to appoint a Sole Arbitrator to resolve the dispute between the parties therein and this Court vide its order dated 16.03.2023 has allowed the said petition and appointed an Arbitrator. Therefore, the learned counsel prayed this Court to allow this petition as well.

3. The learned counsel appearing for the respondent has also agreed that the dispute involved herein is arbitrable. Therefore, he has no objection for appointment of an arbitrator.



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4. Heard the learned counsel on either side and perused materials placed before this Court.

5. Upon perusing the materials and hearing the submissions made by the learned counsel on either side, it is crystal clear that the dispute involved herein is arbitrable as per Clause 21(a) of the Tender Notice floated by the respondent. Hence, this Court is inclined to pass the following order:

(i) **Mr.Naveen Kumar Murthi, Advocate, having office at T6, 3rd Floor, Singapore Plaza, No.164, Linghi Chetty Street, Chennai – 600 001, Mobile No.9884740424** is appointed as the Arbitrator to enter upon reference and adjudicate the dispute *inter se* the parties.

(ii) The learned Arbitrator shall pass award within a period of six months from the date of receipt of a copy of this order, only after issuing notice to the parties and hearing them.

(iii) The parties shall pay fees and other incidental charges to the learned Arbitrator fixed by him, equally.

(iv) In the event of non-appearance of the respondent before the learned Arbitrator, petitioner shall pay the entire remuneration and other



expenses at first instance and thereafter, petitioner can recover the same directly from the respondent.

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6. Accordingly, this petition is ordered. The parties shall bear their own costs. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under the provisions of Arbitration and Conciliation Act 1996, before the Arbitrator.

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Index : Yes/No

Speaking Order (or) Non Speaking Order



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KRISHNAN RAMASAMY, J.

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